

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

INDEPENDENT DISPATCH, INC)
)
 Plaintiff,)
)
 v.)
)
 F. C. MEYERS PACKAGING, LLC)
)
 Defendant.)

Civil Action Case No. 05-10950 RWZ

AMENDED ANSWER TO THE COUNTERCLAIM

Plaintiff and Defendant-in-Counterclaim, Independent Dispatch, Inc. ("IDI") Answers the Counterclaim as follows:

1. No response is required to paragraph 1 of the Counterclaim.
2. Admit
3. IDI is without sufficient knowledge or information to admit or deny the allegations contained in paragraph 3 of the Counterclaim.
4. IDI admits that is Oregon corporation with a principal place of business as alleged, but denies that it simply arranges shipments for third parties. IDI operates as a federally licensed freight forwarder of general commodities and as a motor carrier.
5. Admit only that from time to time IDI offered specific rates and services to F.C. Meyers Packaging, LLC (FC Meyers).
6. Deny.
7. Deny that FC Meyer's "engaged" IDI. FC Meyers choose to request service from

Upon information and belief, plaintiff has failed to join indispensable parties.

FOURTH AFFIRMATIVE DEFENSE

Whatever shipments were forwarded by IDI were accepted in accordance with and subject to all the terms and conditions of all applicable contracts, bills of lading, any applicable tariffs and classifications, and the rules set forth therein. IDI duly performed the terms and conditions on its part to be performed. IDI claims the benefit of all defenses accorded it by those waybills and by all other applicable contracts under which the shipment traveled.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff has failed to present a claim and/or suit within the appropriate time limitations required by the contract of carriage.

SIXTH AFFIRMATIVE DEFENSE

The loss, if any, occurred as a result of an act or default of the shipper or its agent, without intervening action on the part of IDI.

SEVENTH AFFIRMATIVE DEFENSE

To the extent that plaintiff seeks recovery for special damages, Cargo Transit is not responsible.

EIGHTH AFFIRMATIVE DEFENSE

In the event that the plaintiff had not or has not any title or interest in the shipment the subject of this action, then the plaintiff is not the real party of interest herein and is not entitled to maintain this suit.

NINTH AFFIRMATIVE DEFENSE

Upon information and belief FC Meyers and/or its customer have failed to mitigate damages.

IDI pursuant to the rate proposals.

8. The Counterclaim contains no paragraph 8.
9. Admit only that a shipment was delivered to Phoenix, AZ rather than Pleasanton, CA, however deny that it was IDI that misrouted the shipment.
10. IDI is without sufficient knowledge or information to admit or deny the allegations contained in paragraph 10 of the Counterclaim, however the arrangements between FC Meyer and its customer are immaterial, as it is undisputed that the shipment was delivered and in the possession of FC Meyer's customer, thus any claim for the full value of the shipment by FC Meyer or its customer cannot be made in good faith.
11. Deny.
12. Deny.
13. Deny.

FIRST AFFIRMATIVE DEFENSE

Plaintiff-in-counterclaim has failed to state a claim for which relief may be granted against IDI. Plaintiff-in-counterclaim is and was aware when it brought its counterclaim that the shipment at issue had been delivered to its customer and that neither it nor its customer were entitled to claim the full value of the shipment. Plaintiff-in-counterclaim's claim was brought in bad faith, without investigation and solely to harass IDI and drive up the cost of litigation.

SECOND AFFIRMATIVE DEFENSE

Plaintiff-in-counterclaim's claim is preempted by the Carmack Amendment.

THIRD AFFIRMATIVE DEFENSE

TENTH AFFIRMATIVE DEFENSE

Upon information and belief FC Meyer's customer is in actual possession of shipment, and has suffered no damages.

WHEREFORE, defendant Independent Dispatch, Inc. demands judgment dismissing the counterclaim, its reasonable attorney fees and costs for defending against a bad faith claim and such other and further relief as this Court deems just and proper.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Liese Gallagher Howarth", is written over a horizontal line.

Liese Gallagher Howarth
BBO # 637101
GALLAGHER & HOWARTH, P.C.
68 Bridge Street, Suite 207
Suffield, CT 06078
(860) 254-5434
(860) 254-5430 Facsimile
Howarthlaw@aol.com

Date: July 13, 2005

CERTIFICATE OF SERVICE

I, Liese G. Howarth, hereby certify that on July 13, 2005, I served via U.S. Mail, postage prepaid, a copy of the foregoing Amended Answer to the Counterclaim to the following attorney:

Matthew P. Schaefer
Brann & Isaacson
184 Main Street, P. O. Box 3070
Lewiston, ME 04243-3070

A handwritten signature in black ink, appearing to read 'Liese G. Howarth', is written over a horizontal line.

Liese G. Howarth, Esq.

GALLAGHER & HOWARTH, P.C.

68 Bridge Street

Suite 207

Suffield, CT 06078

Phone: (860) 254-5434

Facsimile: (860) 254-5430

Attorney for Plaintiff



FC Meyer Packaging llc
A Mafcote Affiliate

Charles J. Steinbrecher
Production / Distribution Manager
1000 Thomas Avenue
Jeannette, PA 15644
Phone: 724-523-5565 x 111
Fax: 724-527-4791
Email: csteinbrecher@fcmpackagingsales.com

May 6, 2005

TO: Ron Johnson Independent Dispatch

FR: Charles Steinbrecher Production / Distribution Manager

RE: Shortage Claim

To whom it may concern,

Due to your inability to provide a proof of delivery for our load #9296, I am sending a credit or charge back for the entire amount of the invoice.

Thank You,

Charles J. Steinbrecher

5- 6-05; 9:54AM:JEANNETTE PACKAGING

:7245273575

2/ 2



FC Meyer Packaging Inc
 A Mafcote Affiliate

Charles J. Steinbrecher
 Production / Distribution Manager
 1000 Thomas Avenue
 Jeannette, PA 15644
 Phone: 724-523-5565 x 111
 Fax: 724-527-4791
 Email: csteinbrecher@fcmpackagingsales.com

May 6, 2005

TO: Ron Johnson Independent Dispatch

FR: Charles Steinbrecher Production / Distribution Manager

RE: Shortage Claim

To whom it may concern,

Please remit the attached shortage claim as you signed for 1,176 cases and delivered only 0 (zero). The consignee has no record of receiving.

Thank You,

Charles J. Steinbrecher

OVERAGE SHORTAGES & DAMAGES

INVOICE	CUST	ADDR	CITY	ZIP	ITEM	Price	#	P	S	Total
9296	Unisource	4225 Hacienda Drive Pleasanton,		94588	ALL	\$15,167.52	1	\$		15,167.52
Tra er										

\$ 15,167.52

These items were short on a load picked up at our facility on 11/22/04. You signed for 1176 cs. and delivered 0. Please remit the amount shown.

COVER**FAX**

SHEET

Company: F C MEYER
Attn: Chuck Steinbrecher
Fax #: 724.527.3575
Subject: P.O.D. for trlr# EMHU 241861
Date: ~~5.31.05~~ 6.7.05
Pages: 2, including cover page

From the desk of...

Ron Johnson
Account Manager
rjohnson@independentdispatch.com

Independent Dispatch, Inc.
2141 E Middlefield Road
Portland, Oregon 97211-1299

877-535-6411
503-535-6411
Fax: 503-327-2266

1:30
0745



J & L TRANSPORTATION INC.
P.O. Box 8325 • Phoenix, Arizona 85005-8325
(602) 278-9122 FAX (602) 278-4931

DATE

12/1/04

4 619+

SHIPPER

PC HYTER PACKAGING
PORTLAND OR

CONSIGNEE

UNISOURCE
844 N 47th AVE
PHOENIX AZ

BL #

1 (602) 278-2516
UNISOURC
Janice

Ref. #

P.O. # 43412638

Trir. # ENHU-241861-UP

P/U # 24390810

CUST.

INDEPDIS

REF. #

654212

Description

1 SEALED TRLR 13 PCS

Weight

43,000

Bill To:

INDEPENDENT DISPATCH
214 N E MIDDLEFIELD RD
PORTLAND OR 97211

Appt. Date

12/1

Time

10:00

Wait ☒

Drop ☐

Unload ☐

H/M ☐

CHARGES

Instructions:

DEL/PU

105.00

15.75

Refused 10cs
#1315 Damage

1129 PCS

DRIVER

Janice

ARRIVE

11:15

SEAL #

4403593

DEPART

1:30

SIGNATURE

Authorization #

This is to certify that the above named materials are properly classified, described, packaged, marked, and labeled, and are in proper condition for transportation according to the applicable regulations of the Department of Transportation.

TOTAL

\$ 120.75

Trailer must be called in when empty and clean with 48 hours, detention charges will be charged after 48 hours time is used.

TRAILER RECEIVED IN GOOD CONDITION UNLESS NOTED

Confirmation Report - Memory Send

Date & Time: Jun-07-2005 02:41pm
Tel line : 503-535-6638
Machine ID : IDI ltermodal

Job number : 002
Date & Time : Jun-07 02:40pm
To : 917245273575
Number of pages : 002
Start time : Jun-07 02:40pm
End time : Jun-07 02:41pm
Pages sent : 002
Status : OK

Job number : 002

*** SEND SUCCESSFUL ***

COVER

FAX

SHEET

Company: F C MEYER
Attn: Chuck Steinbrecher
Fax #: 724.527.3575
Subject: P.O.D. for trlr# EMHU 241861
Date: ~~5-31-05~~ 6. 7. 05
Pages: 2, including cover page

From the desk of...

Ron Johnson
Account Manager
rjohnson@indopointdispatch.com

Indapoint Dispatch, Inc.
214 N. E. Middlefield Road
Portland, Oregon 97211-1200

877-535-6411
503-535-6411
Fax: 503-327-2216

Confirmation Report - Memory Send

Date & Time: May-31-2005 03:06pm
Tel line : 503-535-6538
Machine ID : ID1 ltermoal

Job number : 827
Date & Time : May-31 03:06pm
To : 917245273575
Number of pages : 002
Start time : May-31 03:06pm
End time : May-31 03:06pm
Pages sent : 002
Status : OK

Job number : 827

*** SEND SUCCESSFUL ***

COVER

FAX

SHEET

Company: F C MEYER
Attn: Chuck Steinbrecher
Fax #: 724.527.3575
Subject: P.O.D. for trlr# EMHLY 241861
Date: 5.31.05
Pages: 2, including cover page

From the desk of...

Ren Johnson
Account Manager
rjohnson@indspndentdispatch.com

Indepdent Dispatch, Inc.
2141 E Middlefield Road
Portland, Oregon 97211-1269

577-835-8411
503-535-6411
Fax: 503-227-2268

583-285-4035

Ron,

I faxed this to OSIT.

My boss wants me to charge them
or IDE back for the entire load if
I don't get a POD today. You are
the only broker I use that uses

OSIT as a cartage company.

Please help me out with this.

Thank you
Chae J. Sh

724-923-5325

EXF 115

06-15-2005 13:50 From-

May-02-2005 15:53 From: IDI CUSTOMER SERVICE

+2534450774

T-647 P.00 /001 P-520

Independent Dispatch, Inc.214 N.E. Middlefield Rd.
Portland, OR 97211-1299

Phone: 503-285-4251

Fax: 503-285-4035

Carrier: J & L Transportation Inc

Fax No: 602-278-4931

Rate: 120.75

Shipment Date: 11/19/04

PRENOTIFICATION

Equip Type: 53' EMHU CONTAINER

Trailer No: EMHU 241861

Seal No:

Weight: 43000 Pieces: 13 Commodity Cartons

Shipper: EC Meyer Packaging

Arriving at: UP/PHOEXPRES AZ

Deliver To 1. Unisource
844 N 47th Ave
Phoenix, AZContact:
Phone No: 602-278-1111
PO No.: 43412638

Instructions: Call for Appointment

4-1619+
12-01

attn:

Here is POD
Requested...*I'm sorry for the
incident!!

Thx. Juresca

Please Fax
POD
ASAP

IDI Control No: 654202

(This number must be referenced when invoicing I. I.)

If you have any questions, please contact:

Sean Walker

Phone 503-535-6412 Fax: 503-327-2266

**IDI Document System Cover Sheet
Intermodal Department**

Cust Svc Rep: SW

Customer Name: FC Meyer Packaging

Order No.: 654202

Invoice No: 249032

Date: November 19, 2004

Trailer/Container No: EMHU 241861

Customer No: 5566

Shipper No: 99999

Customer PO No: 9756

Consignee PO No: 43412638



614202

EDI / FAX

Date: 10/11/19
Time: _____

Shipper: FC MEYER
JEANNETTE, PA

Contact: CHUCK STEINBRECHER

Today's Date: 11.12.04
Origin RR/Van Size: EMP 53' (H) STACK
Pickup Date: 11/22 **NO NACS TO AZ**
Pickup #: ASAP...CALL 24 HOURS PRIOR TO PU
Phone #: 975
724.523.55 15 x 115

Consignee: UNISOURCE
844 NORTH 47TH AVE
PHOENIX, AZ

PO #: 43412 38
Phone #: (802) 271-3411
Contact: _____

Send Freight Bill To: FC MEYER
ship date must be printed in body of inv.
and copy of origin B/L attached.

Cust. Order #: 975
By: PETI R
Acct. #: 556
Written By: RJ

Special Instructions: EQUIP RESERV# EH53G62025 Exp 11/20 2359

Rate: 23R
\$2529 + \$265 (FSC)
Trailer: EMH424186
Seal: _____
Weight: _____

(1 %) OST 176.7
(FAX# 724. 63.8926)
(81810 + 1.5%) NS 2036.25
Reg 105
(\$106 + 15%) J&L TRANSPORTATION 120.75

Plan: 25 Quote: 1000
Routing: PITTSBURGH, PA / PHOENIX, AZ
NS / CHI / UP

Commodity: FOLDED CARTONS
NOA: J&L TRANSPORT

Reservation
Program EHX060205
Customer EMP
Reservation Ramp INDEPENDENT DISPATCH
Origin Ramp NS Pittsburgh
Destination Ramp NS Pittsburgh
Return Ramp UP Phoenix Express
Creation User *AUTOBOOK /
Creation Date/Time 11/19/2004 07:40
Apply to Open Reservation
Chassis Number
Equipment Number ENHU 241661
Equipment 53 High Cube
Customer Reference PG Meyer
BOL 854202
Urgent Assignment U.S.I. Trucking Vol., Inc.
Destination Drymen J & L Transportation, Inc.
Seed Number 14403693
Change User /
Change Date/Time
Request Number 855094
Expiration Date/Time 12/01/2004 14:30

Standby	NS	Pittsburgh	11/19/2004	07:40	11/19/2004	07:40	0.0	0.0
Revised	NS	Pittsburgh	11/19/2004	07:40	11/19/2004	12:53	5.2	0.21
Empty/Loaded	NS	Pittsburgh	11/19/2004	12:53	11/19/2004	12:53	0.0	0.0
OrigStreet	NS	Pittsburgh	11/19/2004	12:53	11/22/2004	11:46	70.88	2.95
OrigRamp	NS	Pittsburgh	11/22/2004	11:48	11/22/2004	18:44	6.98	0.29
Transit	NS	Pittsburgh	11/22/2004	18:44	11/24/2004	04:02	33.3	1.38
XTown	NS	3rd Street	11/24/2004	04:02	11/24/2004	10:09	6.11	0.25
Transit	UP	Chicago I/MX	11/24/2004	10:09	11/28/2004	16:44	126.58	5.27
XTown	UP	Wilmet, AZ	11/29/2004	18:44	11/29/2004	19:20	2.6	0.1
PaperTrans	UP	Phoenix Express	11/29/2004	19:20	11/30/2004	06:45	11.41	0.47
StfFreeTime	UP	Phoenix Express	11/30/2004	06:45	12/02/2004	23:58	65.23	2.71
Load/Empty	UP	Phoenix Express	11/30/2004	06:45	11/30/2004	08:45	0.0	0.0
DestRamp	UP	Phoenix Express	11/30/2004	08:45	12/01/2004	10:56	28.18	1.17
DestStreet	UP	Phoenix Express	12/01/2004	10:56	12/01/2004	14:00	3.08	0.12
Complete	UP	Phoenix Express	12/01/2004	14:00	12/01/2004	14:00	0.0	0.0
						359.51	14.918986	36995998

249032

Please Re Bill

REQUEST FOR RAIL BILLING

TO Kenex

DATE 11-22-04

FROM: OST TRUCKING CO., INC.

PH# 1-800-517-9103

FAX# 724-863-8926

STEAMSHIP LINE:

GMP

CONTAINER#

GMH4 241861

CHASSIS#

BOOKING#

654202

SEAL#

WEIGHT:

OTHER:

HAZARDOUS CARGO:

PLEASE SEND EMPTY RAIL BILLING TO:

CSX / PITTSBURGH, PA.

PH# 412-856-7498

FAX# 412-856-7806

N&S PITTSBURGH, PA.

PH# 412-891-5525

FAX# 412-813-5526

**IF THERE ARE ANY PROBLEMS WITH PROCESSING THIS RAIL
BILLING CONTACT OST TRUCKING AT THE ABOVE PHONE#**

NUMBER OF PAGES SENT

TIME

REQUEST FOR RAIL BILLING

~~PLEASE SEE BTH~~

TO Kaner

DATE 11-22-04

FROM: OST TRUCKING CO., INC.

PH# 1-800-517-9103

FAX# 724-863-8926

STEAMSHIP LINE:

GMP

CONTAINER#

GMH4 241861

CHASSIS#

BOOKING#

654202

SEAL#

4402593

WEIGHT:

32,900

OTHER:

52 pallet

HAZARDOUS CARGO:

PLEASE SEND EMPTY RAIL BILLING TO:

CSX / PITTSBURGH, PA.

PH# 412-856-7498

FAX# 412-856-7806

N&S PITTSBURGH, PA.

PH# 412-893-5525

FAX# 412-893-5526

**IF THERE ARE ANY PROBLEMS WITH PROCESSING THIS RAIL
BILLING CONTACT OST TRUCKING AT THE ABOVE PHONE#**

NUMBER OF PAGES SENT

1

TIME 11:15

BILL OF LADING

BOL No: 654202

BOL Date: 11/19/04

CN Reservation No.

Car Initial and No: EMHU 241861 **Kind:** CN **Length:** 53 ft **No of Cars:** 1 **Plan:** 25 **Rule 1 :** No

Origin Ramp: PITTSBURGH, PA

Destination Ramp: PHOEXPRES, AZ

Routing: NS CHGO UP

Bill-To: Independent Dispatch, Inc.
214 NE Middlefield Road
Portland OR 97211
Phone No: 503-285-4251

Shipper: Independent Dispatch, Inc.
214 NE Middlefield Road
Portland OR 97211
Phone No: 503-285-4251

Notify Party: J & L Transportation Inc
602-278-4931

Method of Payment: Prepaid

STCC Code: 2846210

FDA No

Net Weight: 43000 Pounds

Pieces: 13.00

UM: UNT

Seal No:

Description: Cartons

Additional Names:

Beneficial Owner: FC Meyer Packaging
1000 Thomas Ave
Jeannette PA

Crosstown Switch Party:

Party Performing Certification: Independent Dispatch, Inc.

Customs Broker:

Ship From: 1. FC Meyer
Jeannette PA

Deliver To: 1. Unisource
844 N 47th Ave
Phoenix AZ

Price Authority:

NSPQ9000

Sent By: FC MEYER PKG-INV/DIST FAX;

7245234791;

Nov-12-04 12:17PM;

Page 5

IDI

Independent Dispatch Inc.

FC Meyers Packaging Intermodal Booking

Rail Confirmation

Ron's Direct Fax: 503-327-2256

Office Fax: 503-285-4035

TO: Ron Johnson/ IDI
214 N.E. Middlefield Road
Portland, Oregon 97211-1299
Attention: Ron Johnson
Direct Dial: 877-538-6411
Office: 800-828-0430

PICKUP/ ACCOUNT:

FC Meyers Packaging
1000 Thomas Avenue
Jeannette, PA 15644
Attention: Chuck Steinbrecher
724-523-5565 Extension 115

Account #5514

CONTAINER SIZE REQUESTED (Circle One)

40' 45' 48' 53'

ORDER LOAD DATE:

ASAP

FC MEYERS SALES ORDER NUMBER:

9756

IDI ORDER NUMBER:

CONTAINER NUMBER:

DESTINATION/CONSIGNEE CONTACT INFORMATION:

WIS7 JP 434 12638

Phoenix

pick up @ Jeannette

EH53G62025 - AutoBook for Standby # 855064

Booking#	Customer#	Equip Size	Equip Type	Reservation RR	Reservation Ramp
EH53G62025	5800	53	U288	NS	PIT

DST

EH53G62025 - AutoBook for Standby # 855064

Booking#	Ramp Description	Standby #	Expiration Date	Expiration Time
EH53G62025	Pittsburgh	855064	20041120	235959

5566	DATE 11/19/04
EMHU 241861	



INVOICE ORIGINAL FREIGHT BILL
INDEPENDENT
DISPATCH, INC. HOLD BOL
 Order No. - 65420

INVOICE NUMBER
 REF TO THIS NUMBER
249032

Unisource
 844 N 47th Ave
 Phoenix
 AZ

SHIPPER'S NUMBER
9756
 ROUTE (CARRIERS, PRO DATE, NO., JUNCTIONS)
NS CHGO UP

FC Meyer
 Jeannette
 PA

FC Meyer Packaging
 1000 Thomas Ave
 Jeannette, PA 15644

US DOT 237481 IMPD FF-1430 INDD

INTERMODAL

Terms: NET 30

	1 Folded Cartons 1 FSC	43,000	2,319.00	2,319.00
			265.00	265.00
			Total:	2,584.00

PLEASE PRINT ON THIS INVOICE.
 NO STATEMENT WILL BE SENT.

WHEN PAYING
 ALWAYS ATTACH
 REMITTANCE ADVICE.

PAY TO

INDEPENDENT DISPATCH, INC.
 214 N.E. MIDDLEFIELD RD.
 PORTLAND, OREGON 97211
 PHONE: (503) 844-1241
 FAX: (503) 844-1242

5- 3-05: 4:52PM: JFANNETTE PACKAGING

17245273575

4268
8/3
KAL

Anthony Insurance has no record of receiving this. I need a poD ASAP or there will be a checkback for the entire load

STRAIGHT BILL OF LADING - SHORT FORM - ORIGINAL - 1 - NEGOTIABLE

9296

SHIPPER, subject to the classification and... (text continues)

FROM FC MEYER PACKAGING, LLC

11-22-04

AT 11111 AVENUE GREENSBURG, PA. 15601

BY TRUCK ☐ FREIGHT ☐ SHIPPER'S NO. 9296

Consigned to UNISOURCE WORLDWIDE 9999

(Call or email address of consignee - For purposes of notification only.)

Destination 4225 HACIENDA DR PLEASANTON, CA 94588

State of County of

Route

Release No. 31245955

Delivering Carrier COMM OST

Vehicle or Car Initial

No. 17111111111

PACKAGES	DESCRIPTION OF ARTICLES, SPECIAL MARKS AND EXCEPTIONS	WEIGHT (PUNNETS TO COME)	CLASS OR RATE	CHECK COLUMN
1176	CALL FOR DELIVERY APPOINTMENT 925-227-6064 DELIVERY DATE 11/03/04			
CASES	4 OF PALLETS	TOTAL WGT		
		332904.00		
	FOLDING CARTONS, K.D.F. O.T. CORRUGATED			
	NMFC #29280			

FC MEYER PKG LLC 1000 THOMAS AVENUE JEANNETTE, PA. 15644

Permitment post office address

TOTAL WGT

SHIPPER FC MEYER PACKAGING, LLC AGENT Bob West 667

Charges Advanced: C.O.D. SHIPMENT C.O.D. AMT. Collection Fee Total Charges

Chuck 124-523-5565-115